



**US Army Corps
of Engineers**
Omaha District

PUBLIC NOTICE

Waterway: Waters of the United States-State of Nebraska
Issue Date: March 18, 2003

Reply To:
NEBRASKA REGULATORY OFFICE – KEARNEY
1430 CENTRAL AVENUE, KEARNEY, NEBRASKA 68847

REVISED MITIGATION POLICY FOR NATIONWIDE PERMIT 14

The U.S. Army Corps of Engineers (Corps), in the March 9, 2000 Federal Register, issued 5 new nationwide permits (NWP). The Corps also modified 6 existing nationwide permits, 9 general conditions, and added 2 general conditions to the nationwide permits. Nationwide Permit 14 (linear transportation crossings) was 1 of the 6 modified NWPs. General condition 19 (also modified) required compensatory mitigation at a minimum 1:1 ratio for all wetland impacts requiring a preconstruction notification (PCN)* (see 33 CFR 330.6 Appendix A(C)(19)). In the case of Nationwide Permit 14, this would include all crossings involving wetland fill.

When the Nebraska Department of Environmental Quality issued Section 401 Water Quality Certification, a condition was added which required mitigation for wetland losses greater than 0.1 acre. The Corps likewise did not require compensatory mitigation for impacts 0.1 acre or less. However, the Corps has reconsidered its policy after reviewing the history of Nationwide Permit 14 and Nebraska's wetland resources.

To date, 4,637 projects have been authorized under Nationwide Permit 14 in the State of Nebraska, for a total of 12,926 crossings. The thresholds for fill have varied, from 200 cubic yards (1987-1992) to 1/3 acre (1992 to 2000) to the present threshold of 1/2 acre. The quantity of unmitigated wetland fill per crossing has varied from 200 cubic yards (1987-1992) to 1/3 acre (1992 to 2000) to the present 0.1-acre limit.

Historically, wetlands covered only 6% of the state's area. Today, that percentage has been reduced to 3.9%, a 35% loss.

The number of Nationwide 14 authorizations is expected to remain steady or increase in the foreseeable future. With the present policy, wetland losses relative to Nationwide 14 are expected to increase as well. The number of permitted crossings alone suggests that the adverse

effects on the aquatic environment could be more than minimal. When this loss under Section 404 is combined with a historical loss of 35% in a state with a low proportion (3.9%) of wetlands, the Corps has therefore changed its policy to reflect the current regulations more accurately. Effective with the public notice date, the Corps will be requiring compensatory mitigation for any wetland losses and will not use the 0.1-acre threshold. As stated in general condition 19(c), the Corps may still determine on a case-by-case basis that some other form of mitigation would be more environmentally appropriate.

* Under general condition 13(b) of the current nationwide permit regulations, the PCN must include a delineation of affected special aquatic sites, including wetlands. It is the applicant's responsibility to provide the Corps of Engineers with this information in order to verify the nationwide permit applicability.